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OATHS IN THE SUPREME COURT OF JUDICATURE.

A MANUAL

FOR THE USE OF

COMMISSIONERS TO ADMINISTER OATHS

IN THE

SUPREME COURTS OF JUDICATURE IN ENGLAND AND IRELAND, AND OF ALL OTHER PERSONS EMPOWERED TO ADMINISTER OATHS IN AID OF PROCEEDINGS IN COURTS OF LAW.

PART I.

CONTAINING PRACTICAL INFORMATION RESPECTING THEIR APPOINTMENT, DESIGNATION, JURISDICTION, AND POWERS.

PART II.

COMPRISING A COLLECTION OF OFFICIALLY RECOGNISED FORMS OF JURATS AND OATHS, WITH EXPLANATORY OBSERVATIONS.

FOURTH EDITION.

By THOMAS W. BRAITHWAITE,
OF THE CENTRAL OFFICE.

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LONDON:
STEVENS AND SONS, 119, CHANCERY LANE,
Law Publishers and Booksellers.
1881.

PREFACE TO THE FOURTH EDITION.

NUMEROUS Acts of Parliament and Rules of Court, passed and issued since the preceding Edition of this Manual was published, (in 1876), having introduced many alterations in the general practice of the Supreme Court of Judicature, and in the duties of its officers, this present Edition has been prepared.

The main structure of the Book remains unaltered—so also its leading title—the *primary* object still being to furnish English Commissioners with a Manual for their guidance. But, inasmuch as the powers and duties of the Commissioners in England and in Ireland are now so nearly identical, and reciprocal, it has been thought desirable to embody a good deal of practical information useful to Irish Solicitors

and Commissioners—and this will be found interspersed in appropriate places in the Book—and advantage has been taken of the opportunity to make the Book increasingly useful to all persons empowered to administer oaths in aid of proceedings in Courts of Law.

In furtherance of these objects much additional information is now introduced, and some new Forms are given. The several moot points in which Commissioners cannot but feel an interest, and which were somewhat fully observed upon in the former Edition, not having even yet received any judicial interpretation, the observations thereon are retained in the present Edition. But all the Forms applicable to Answers to Bills in Chancery, embodied in the former Edition, are excluded from the present Edition, such form of pleading having, by the operation of the Judicature Acts, now become obsolete.

The whole subject-matter of the Book has, in fact, been so revised, corrected, and added to, as to make it conformable, as nearly as may

be, to present requirements of practice—and the methodical arrangement adopted throughout will, it is hoped, be found greatly to facilitate the search for information.

The Manual thus rectified, and (so to speak) re-edified, is now again submitted in full confidence that it will receive, from those for whose guidance it is offered, an approbation as gratifying as that accorded to the previous efforts of the Author in the like direction.

May, 1881.

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OATHS
IN
THE SUPREME COURT
OF
JUDICATURE IN ENGLAND.

PART I.

COMMISSIONERS TO ADMINISTER OATHS.

I.—APPOINTMENT.

1.—As to Persons appointed prior to 1st November, 1875.

By Section 77 of the Judicature Act, 1873 (36 & 37 Vic. c. 66), it is provided (*inter alia*) as follows:—

"All Commissioners to take oaths or affidavits, at the time of the commencement of this Act, attached to any Court whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, shall, from and after the commencement of this Act, be attached to the Supreme Court, consisting of the said High Court of Justice and the said Court of Appeal."

Upon reference to the section itself, it will be seen that these Commissioners are, in the first paragraph of the section, mentioned in the same category with the officers of the Court generally. It may, however, be doubted whether the words, "the officers so attached," occurring in the 2nd paragraph of the same section, apply to such Commissioners. The particular provisions, and the general scope, of the 2nd paragraph would seem to apply chiefly, if not solely, to those "officers" *who are attached to the several Departmental offices of the Court.*

And this view receives support from Rule 60 of the "Rules of the Supreme Court, April, 1880," which defines the expression "Officer of the Supreme Court" occurring in "the Supreme Court of Judicature (Officers) Act, 1879," and in Order LX. of the "Rules of the Supreme Court," as meaning "any Officer paid wholly or partly out of public money who is attached to the Supreme Court, the High Court of Justice, or the Court of Appeal." But if the words "the officers so attached" do embrace and apply also to Commissioners to administer oaths, then the question may arise as to whether the words "shall hold their offices by the same tenure, and upon the same terms and conditions as if this Act had not passed," also occurring in the 2nd paragraph, may not restrictively affect such Commissioners in the exercise of their functions. The question is

only alluded to in this place. It will be found somewhat fully discussed under sub-section 1 of Section III. of Part I.

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2. As to Persons seeking Appointment under the Authority of Section 84 of the Judicature Act, 1873.

By Section 84 of the above Act it is provided (*inter alia*) as follows:—

"All Commissioners to take oaths or affidavits in the Supreme Court shall be appointed by the Lord Chancellor."

These few words virtually repeal all former provisions applicable to the power of appointment of Commissioners to administer oaths in proceedings in the several Courts now "united and consolidated together" and constituting the "Supreme Court of Judicature in England." True, the words quoted, while empowering appointment, do not describe the persons, nor define the status, of those who may be appointed; but, notwithstanding this, they do virtually transfer to and vest in the Lord Chancellor all the powers given by previous Acts in relation to such Appointments; and Commissions are, under the authority of the above in part quoted section, granted to Solicitors of six years' standing and of good character, and without limit of district or area in the country in which they reside and practise

The course of procedure to obtain an Appointment will be as follows:—

(1.) *Of Persons Resident and Practising in England or Wales.*

Notice of intention to apply for a commission must, three weeks before petitioning the Lord Chancellor, be given by the intending applicant to the Registrar of Solicitors at the Hall of the Incorporated Law Society of the United Kingdom, Chancery Lane, and such Notice is to be, in Form, as follows:—

Form of Notice.

"Notice is hereby given that I ——, of ——, in the county of ——, intend to apply to the Right Honourable the Lord High Chancellor of Great Britain to be appointed a Commissioner to administer oaths in the Supreme Court of Judicature in England, and that I was admitted a Solicitor in —— Term, 18—, and have taken out my practising certificate for the last six years.

"Dated this —— day of —— 188—.

[*Signature.*]

"To the Registrar of Solicitors,
Incorporated Law Society's Hall,
Chancery Lane, London."

At the expiration of the three weeks, a Petition addressed to the Lord Chancellor may

be left with his Lordship's Purse Bearer, and such Petition is to be, in form, as follows:—

Form of Petition.

"To the Right Honourable the Lord High Chancellor of Great Britain:

"The humble Petition of ——, a practising solicitor in the Supreme Court of Judicature,

"Sheweth,—

"That your petitioner has practised as a Solicitor for upwards of —— years, and that his place of business is situated at ——, in the county of ——.

"That your petitioner has carried on his business for the last —— years at ——, aforesaid.

"Your petitioner therefore humbly prays that your Lordship will be pleased to appoint him a Commissioner to administer oaths in the Supreme Court of Judicature in England.

"And your petitioner will ever pray, &c."

The Petition must be accompanied by Certificates in Form as follows:—

Form of Certificate to be signed by two practising Barristers, and by two practising Solicitors.

"To the Right Honourable the Lord High Chancellor of Great Britain:

"We whose names are hereunto set and sub-

scribed do humbly certify to your Lordship that we know and are well acquainted with —— of ——, a practising Solicitor in the Supreme Court of Judicature. That he is a person of integrity, and well affected to Her Majesty's person and government, and properly qualified to execute the office of a Commissioner to administer oaths in the Supreme Court of Judicature in England.

"Dated this —— day of —— 188—."

[*Signatures.*]

Form of Certificate to be signed by some of the principal Residents (*a*) *in the neighbourhood of the applicant's residence.*

"To the Right Honourable the Lord High Chancellor of Great Britain:

"We the undersigned, being Householders residing in —— aforesaid, do hereby humbly certify to your Lordship that —— of —— is well known to us. That he is a person of integrity and well affected to Her Majesty's person and government. And we further humbly certify to your Lordship that in our opinion a Commissioner for administering oaths in the Supreme Court is required for the above district.

"Dated this —— day of —— 188—."

[*Signatures.*]

Within the fold of the Petition, and before

(*a*) Two at least.

presenting it, the following Form of Certificate will be written and signed by the Deputy Registrar of Solicitors:—

"I hereby certify that the Notice (*b*) directed by the Lord Chancellor was served on me on the —— day of ——.

——

"Deputy Registrar of Solicitors."

The Petition and Certificates are, as before stated, to be left with the Lord Chancellor's Purse Bearer for approval. If satisfactory he will, after examination of the papers, give to the applicant a Form of Commission to be stamped with a £5 (*c*) Judicature Fee Stamp (impressed). The Form thus stamped is then to be returned to the Purse Bearer, and in a few days afterwards it will be handed to the applicant duly filled in, and signed by the Lord Chancellor.

No other Fee than the £5 is payable; but the Commission must, before it is acted on, be entered with the Registrar of Solicitors at the Hall of the Incorporated Law Society, Chancery Lane, London, a charge of 1*s*. for such entry being there made. (See 23 & 24 Vic. c. 127, s. 30.)

The Commission may possibly be retained by the Registrar of Solicitors for a few days.

(*b*) The notice of intention to apply for the Commission.
(*c*) See "Orders as to Court Fees," 28th October, 1875, p. 5.

It will, however, operate, and may be acted on by the Commissioner, as on and from the day on which it is left for entry with the Registrar.

The following is a Form of the Commission granted under section 84 of the Judicature Act, 1873:—

Form of Commission.

"I, the Right Honourable [Roundell Baron Selborne] Lord High Chancellor of Great Britain, by virtue of an Act passed in the Session of Parliament holden in the 36th and 37th years of the reign of Her present Majesty intituled 'An Act for the constitution of a Supreme Court, and for other purposes relating to the better Administration of Justice in England, and to authorise the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council,' and of all other powers enabling me in this behalf, Do by these Presents appoint——of——, being a practising Solicitor, to be a Commissioner (*d*) to administer oaths in the Supreme Court of

(*d*) In the case of a Commission granted to a person resident and practising *in Scotland*, the words "in Scotland" will be inserted here. The like observation applies, *mutatis mutandis*, to Commissions granted to persons resident and practising in *Ireland*, the *Isle of Man*, and the *Channel Islands*,—and Commissions thus worded will, it is presumed, limit such Commissioners, in the exercise of their functions, to the country or place expressed in their Commissions.

Judicature in England, so long as he shall continue to practise as a Solicitor.

"Given under my hand this —— day of —— 188—.

[*Signature of the Lord Chancellor.*]

(2.) *Of Persons resident and practising in Scotland, Ireland, the Isle of Man, or the Channel Islands.*

The course of procedure to obtain a Commission is, in these cases, similar to that applicable in the case of a person resident and practising in England or Wales, except that, as respects Scotland, two Writers to the Signet will certify instead of two barristers.

Commissions to persons resident and practising in Scotland and Ireland were granted under the Act 6 & 7 Vic. c. 82, and to persons resident and practising in the Isle of Man and the Channel Islands, under the Act 16 & 17 Vic. c. 78; and, as respects Scotland, the Isle of Man, and the Channel Islands, Commissions will, doubtless, still be granted under those Acts. Probably not so, however, as respects Ireland, and for the following reasons:—Under section 22 of the English Act, 15 & 16 Vic. c. 86 [referred to under sub-section (3) of section III] any person lawfully authorised to administer oaths in Scotland, Ireland, the Isle of Man, and the Channel Islands, is authorised

to administer, in such countries and places, oaths in proceedings pending in the English Courts—and the provisions of section 81 of the Irish Act, 30 & 31 Vic. c. 44, are nearly identical with those of section 22 of the English Act above referred to.

These reciprocal provisions would seem to render it unnecessary that any person in Ireland should now apply to the Lord Chancellor in England for a Commission to administer oaths in proceedings pending in the English Courts, and *vice-versa*. Then again, under section 72 of the "Supreme Court of Judicature Act (Ireland), 1877," all Commissioners for oaths attached, at the commencement of the Act, to any of the Courts merged in the Supreme Court "shall be attached to the Supreme Court;" and "all Commissioners (to be thereafter appointed) to take oaths or affidavits in the Supreme Court shall be appointed by the Lord Chancellor" (of Ireland). And it is clear, from the above referred to provisions of section 22 of the Act 15 & 16 Vic. c. 86, that any person so appointed by the Lord Chancellor in Ireland as a Commissioner "to take oaths or affidavits" there, may take oaths or affidavits in proceedings pending in the Supreme Courts either of England or of Ireland. Such being the case, it may be useful to Solicitors in Ireland seeking Appointment as Commissioners to take oaths or affidavits there, to give, in this place, some practical information

guideful to them (*e*). It would seem that the Lord Chancellor (in Ireland) appoints Commissioners to administer oaths under the provisions not only of section 73 of the "Supreme Court of Judicature Act (Ireland), 1877," but also pursuant to the Act 30 & 31 Vic. c. 44, sections 76 and 78, and that a Commissioner in Ireland is now designated as "Commissioner to administer oaths for the Supreme Court of Judicature in Ireland"—and this whether he happen to reside and practise in Dublin, or elsewhere in Ireland—and when appointed, he may, under section 74 of the "Supreme Court of Judicature Act (Ireland), 1877," "exercise his functions as such Commissioner in any part of Ireland, without regard to any limit of place specified in his Commission."

To obtain any such Commission the following must be observed:—The Solicitor seeking the appointment must be duly certificated, and he must present to the Lord Chancellor (of Ireland) a Petition stating the date of his admission as a Solicitor, and that he is a duly certificated practising Solicitor, having his registered office at ——. He may also mention any special qualification he may happen to possess—a Collegiate Degree, for instance—and the Petition should conclude with a short

(*e*) For much of this information the author is indebted to John H. Goddard, Esq., Secretary to the Incorporated Law Society of Ireland.

prayer asking for the Appointment. If the Petitioner be resident in any country town in Ireland, either where there is not any Commissioner, or a Commissioner who resided there has died (thus creating a vacancy), it should be so stated in the Petition. The Petition must be accompanied by a recommendatory Certificate, signed by a few Magistrates, leading Merchants or Solicitors, resident in the locality. If any other Solicitor is making a like application at the same time, and contests the Appointment, Counsel for each Petitioner must be employed. If there be no such contest, and necessity for the Appointment is shown, the Lord Chancellor grants the prayer of the Petition. The Petition is to be lodged in the office of the Lord Chancellor's Secretary. No fee is then payable, but, when the Lord Chancellor gives his Fiat, a warrant is prepared by the Secretary, signed by the Lord Chancellor, and sent by the Secretary to the office of the "Clerk of the Crown and Hanaper," who prepares the Commission, under seal, also a Dedimus, with Form of Return endorsed thereon, the "Oath of Allegiance" and "Oath of Office." The stamp duty to be paid on the Commission is £1 (see 30 & 31 Vic. c. 44, s. 79), and parchment 1s. There are no other Fees. Any existing Commissioner can swear in the new Commissioner, and fill up, and sign, and date, the Return, &c., endorsed on the Dedimus. The several documents are then to

be returned to the "Clerk of the Crown and Hanaper," who will issue the Commission, and hand it out to the applicant, who may thereupon at once commence the exercise of his functions as a Commissioner. It is not *essential* that the Appointment be advertised, either in the *Dublin Gazette*, or in any other Journal, (see 30 & 31 Vic. c. 44 s. 79) but Gentlemen who obtain such Appointments do generally notify them in some of the Legal Journals. One shilling and sixpence is the Fee allowed to be taken for each oath administered. No fee is at present allowed for "Exhibits," except, in the Probate, &c., Division of the High Court, where, on taxation, payment of one shilling to the Commissioner for each "Exhibit" is allowed.

There do not appear to have been issued, in Ireland, since the passing of the Irish Judicature Act, any Rules specially defining the powers, &c., of Commissioners there. But the practice in both England and Ireland being now so nearly assimilated, agreeably with the intention of the Legislature as expressed in section 61 of the "Supreme Court of Judicature Act (Ireland), 1877," Irish Solicitors and Commissioners may find reliably guideful information in the Rules and general practice of the English Supreme Court, much of which is set forth in this Manual, though for the guidance, *primarily*, of the English Commissioners.

3. As to Persons specially authorised by virtue of Particular Offices held by them.

British Ministers, Notaries, and various other persons, authorised to administer oaths, derive authority from express statutory provision (see 6 Geo. 4, c. 87, s. 22), and exercise it by virtue of their office—reference to the manner of Appointment to which comes not within the scope or intention of this section.

II.—DESIGNATION.

1. Of a Commissioner resident and practising in England or Wales.

"A Commissioner to administer oaths in the Supreme Court of Judicature in England."

2. Of a Commissioner resident and practising in Scotland, the Isle of Man, or the Channel Islands.

"A Commissioner in Scotland (*f*) [or as the case may be] authorised to administer oaths in proceedings in the Supreme Court of Judicature in England."

(*f*) This Form is suggested as expressing or specifying the country or place within the territorial limits of which the Commissioner is empowered to act. See also the Form of Commission in such cases, on p. 8.

3. Of a Commissioner of the Supreme Court of Judicature in Ireland.

"A Commissioner to administer oaths for the Supreme Court of Judicature in Ireland."

4. Of a Commissioner in Ireland acting under an English Commission.

"A Commissioner in Ireland authorised to administer oaths for the Supreme Court of Judicature in England."

5. Of persons acting by virtue of any particular office held by them.

In all these cases the Designation is governed by the style or title of office of the person authorised to administer the oath. Thus, a Consul, Vice-Consul, Notary Public, or Justice of the Peace (acting under statutory authority, or by virtue of his office) would so designate himself.

NOTE.

The Forms of Designation above set forth, not having yet been settled (*g*) otherwise than

(*g*) The question was, however, incidentally raised in *Barwick* v. *Yeadon Local Board*, 24 W. R. p. 23, and in *Re Thomas*, Weekly Notes, 1875, p. 188.

by official usage, a few observations upon the subject may be useful.

The Form of words in and by which a Commissioner should designate his authority may seem a matter of slight importance, and no doubt the validity of an oath must, if questioned, be determined by proving (1) that the person administering the oath was duly authorised to administer it; (2) that he did administer it; and (3) in proper form—facts usually proven by the Commissioner himself, and where thus proven sufficient, probably, to fix a deponent to the obligations of his oath, whether the person administering the oath has, in signing the jurat, fully and accurately designated himself or not. Still, it will be remembered that forms of words describing or designating Commissioners *were* given in the Act 16 & 17 Vic. c. 78, under which "London Commissioners to administer oaths in Chancery" were appointed, also in the Act 22nd Vic. c. 16, under which "London Commissioners to administer Oaths in Common Law" were appointed.

If like provision had been made in the Judicature Act, with reference to Commissioners to take oaths or affidavits in proceedings in the Supreme Court, much inconvenience would have been avoided.

However, until the Forms in use have received some authoritative sanction, Commissioners may unhesitatingly use the Forms

above set forth, inasmuch as in them both the Commissioner's territorial area (so to speak) and the Court to which he is attached are fully described. It is not, of course, suggested that Forms of Designation differing (but not substantially) from those above set forth will be rejected.

Great efforts have been made by the officials, charged with the duty of filing affidavits, to secure uniformity, but hitherto without success, the exigencies of business having necessitated acceptance of Forms of Designation, varying considerably from those above set forth. The Forms invented (so to speak) have varied from the ambiguous conciseness of "a Commissioner, &c.," to the elaborate explicitness of "a London Commissioner to administer oaths in her Majesty's Supreme Court of Judicature in England." The truth is, that Commissioners are unwilling, and naturally so, to write thirteen words or more in designating their authority. Nor should even thirteen be needful. Indeed, the author ventures to suggest that one word with four initial letters would, for the English Commissioners, answer every practical purpose.

Thus

"A. B.,
Comr.,
S. C. J. E.,"

might be sufficient, the initial letters being understood as denoting the Supreme Court of

Judicature in England. Examples, by way of illustration, are not wanting. For instance, a Justice of the Peace almost invariably appends to his name merely the letters "J. P.," so likewise a Notary Public oftentimes appends the letters "N. P." or "Not. Pub.," and if Commissioners to administer oaths in proceedings in the Supreme Court were allowed to adopt a similarly concise Form they would themselves be saved much time and trouble, and many an affidavit would count one folio less than at present.

III.—JURISDICTION AND POWERS.

1.—Extent of Jurisdiction.

The powers of Commissioners to administer oaths in proceedings in the Supreme Court are expressed in section 82 of the Judicature Act, 1873. Such section is, in terms, as follows:— "Every person who at the commencement of this Act shall be authorised to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice, shall be a Commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal."

Notwithstanding the seemingly all-inclusive terms of the above quoted section, it was, when

the last edition of this Manual was published, thought desirable to observe somewhat fully upon a question raised at that time concerning the extent (territorially) of the jurisdiction of Commissioners appointed prior to 1st November 1875—and inasmuch as such question has never even yet (so far as the author is aware) been settled by authority, it is deemed desirable to retain, in this present edition, the observations above alluded to, as being likely to be helpful to any Commissioner who may think himself affected by the question.

The expression, "every person," occuring in the above quoted section, is very general, and might, by a wide construction, seem to convert into Commissioners of the Supreme Court every Consul, Vice-Consul, Notary Public, Justice of the Peace, or other person who, at the commencement of the Act, was authorised to administer oaths in proceedings in any of the Courts merged in the Supreme Court. The primary intention of the section is, doubtless, to the effect that, although the Commission held by any person at the commencement of the Act may have emanated from one or more only of the several Courts merged in the Supreme Court, he shall nevertheless be empowered to traverse (so to speak) the proceedings in all the Divisions of that Court. But if the provisions of section 82 are applied only to persons who held Commissions at the commencement of the Act, then the Act is silent as

to the powers of subsequently appointed Commissioners. The section may, however, be regarded as virtually expressing the powers of all persons authorised to administer oaths in proceedings pending in the Supreme Court. The Form of Commission given on page 8 supports this view—and, indeed, it were simply consistent, as well as unquestionably convenient, that every Commissioner of the Supreme Court—at all events, every Commissioner resident and practising in England and Wales—stand in the same relation to the Supreme Court, and to the proceedings pending therein, with powers co-equal and co-extensive.

It will, however, be sufficient for the present purpose, and probably more in harmony with the intention of the section, to regard it as applying, primarily at least, to those persons only who, at the commencement of the Act, held Commissions from the several Courts therein referred to—that is to say, to persons whose Commissions bear date prior to the 1st November, 1875—and hence the question alluded to under sub-section 1 of section 1 of Part I., may here be more appropriately and more fully discussed, viz., whether the words, "shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed," occurring in paragraph 2 of section 77 of the Judicature Act, 1873, apply to, and restrictively affect those Commissioners who had obtained their Commissions prior to

the 1st November, 1875? In other words, whether those Commissioners are, by reason of such words, confined, in the exercise of their functions, within any limit which may happen to be expressed in their respective Commissions. For instance, is a person who, previously to 1st November, 1875, had received an appointment as a "London Commissioner to administer oaths in Chancery," and, clearly, until the 1st November, 1875, empowered to act thereunder only within a radius of ten miles from Lincoln's Inn Hall, still limited to such radius of ten miles, notwithstanding his being now attached to the Supreme Court, under section 77 of the Judicature Act, 1873, and notwithstanding the provisions of section 82?

By any such limitation, Commissioners appointed prior to the 1st November, 1875, may not only have a less extended jurisdiction than that which is, it is believed, given to persons appointed under section 84 of the Act—a distinction surely not intended—but they will also be debarred from the benefit of the provisions of section 82, the intention of which seems (as above stated) to be that "every" Commissioner to take oaths in the Supreme Court shall, in the exercise of his functions as a Commissioner, have a jurisdiction co-extensive with that of the Court itself. For, under that section, "every" of the Commissioners referred to therein is to have power and authority to ad-

minister oaths "in all causes and matters whatsoever which may from time to time be depending in the High Court of Justice, or in the Court of Appeal." Now, if a writ of summons for the commencement of an action be issued in or from the office of a District Registry, a Cause is, from that moment, "pending in the High Court of Justice"—for the District Registries, established under the Judicature Acts, are simply branch official departments of the High Court of Justice—and if a person originally appointed, say, as a "London Commissioner to administer oaths in Chancery" may not administer an oath, say, at Liverpool, to a deponent making an affidavit there in such action, how can it be said that he is empowered to administer oaths "in *all causes and matters whatsoever* which may from time to time be depending in the High Court of Justice?" Yet *he* is one of the "every" thus authorised under section 82.

The author has note of such a case—doubtless only one out of many. In *Re* Jones an affidavit was sworn to at Leamington, before a Commissioner resident and practising in London, and it was afterwards filed (2nd May, 1878,) and used without any objection being made thereto.

If it be argued that the express terms of the Commissions granted prior to the 1st November, 1875, determine the question, it may be replied that the italicised Note prefixed to the

"Rules of the Supreme Court" appended to the Judicature Act, 1875—a Note which though a "little member" may "boast great things," in its far-reaching power and tendencies—that Note would seem to render it both unnecessary and inappropriate to insist upon such an argument; for, according to that Note, where *new* provision is made, the procedure and practice in force prior to the 1st November, 1875, are no longer to remain in force; and hence, if a more extended jurisdiction is conferred upon Commissioners generally by the Judicature Acts, especially by section 82 of the Judicature Act, 1873, then the less extended jurisdiction conferred upon some of them by previous Acts no longer remains in force. It may be added that the foregoing argument receives support from the Form of Designation of a Commissioner hitherto suggested, and as far as possible insisted on, also from the Form of Commission granted under section 84 of the Judicature Act, 1873. (See Form on page 8.)

It will be seen, too, from the observations on p. 3 that no territorial limit is imposed in Commissions now granted other than that of the country in which the Commissioner may reside and practise.

It will, of course, be understood that the foregoing argument is intended to apply to Commissioners resident and practising in England or Wales It is presented only suggestively, and in the hope that, in the absence

of any judicial decision of the question, it may be helpful to Commissioners in their consideration of that question. Of course, a Commissioner appointed prior to the 1st November, 1875, cannot err if he keep within the letter of the terms of his Commission, especially if he lack the courage to break through that magic circle, which, with its diameter of twenty miles, has, or once had, Chancery Lane for its centre.

No such question, as to limit of jurisdiction, can arise so far as Commissioners of the Supreme Court of Judicature in Ireland are concerned. For section 74 of the Act, constituting that Court, in incorporating the provision of section 82 of the English Judicature Act, 1873, expressly provides that "every such Commissioner, if a Solicitor, is hereby authorized to exercise his functions as such Commissioner in any part of Ireland, without regard to any limit of place specified in his Commission." This legislative provision, in favour of Ireland, though not, of course, legalizing anything not expressly legalized by the English Judicature Act, will, doubtless, greatly influence any Judicial decision of the question which may hereafter be pronounced in England—and it will, perhaps, meanwhile encourage English Commissioners to act upon the wide and convenient construction above put upon section 82 of the English Judicature Act, 1873.

The question of the *duration* of a Commissioner's powers under his Commission is discussed in sub-section 8 of this section.

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2. Before whom Affidavits may be Sworn.

Affidavits in proceedings, pending in the High Court of Justice, or in the Court of Appeal, may be sworn and taken before the authorities, and at the places next hereinafter mentioned:—

(1.) *In London.*

Before any "Commissioner to administer oaths in the Supreme Court of Judicature in England." (See 36 & 37 Vic. c. 66, s. 82.)

Also before the following ministerial officers attached to the Supreme Court by the Judicature Act, 1873 (36 & 37 Vic. c. 66, s. 77), viz.:—

(*a.*) The "Masters of the Supreme Court," and "every first and second class clerk in the Filing and Record Department" of the Central Office, and the "Clerk of Inrolments." (See 42 and 43 Vic. c. 78, s. 7; also Rule 10 of the "Rules of the Supreme Court, December, 1879." See also 15 & 16 Vic. c. 87, s. 29, and C. G. O. 1, r. 39.)

(*b.*) The Chancery Division "Taxing Masters" of the Supreme Court "for the purpose of any proceeding before them." (See "the Rules of the Supreme Court (Costs)," r. 23, under heading "Special Allowances," &c.)

(*c.*) The Clerk of the Petty Bag. (See 12 & 13 Vic. c. 109, s. 45.)

(*d.*) The "Chief Clerks" to the Judges in the Chancery Division, "for the purposes of any proceedings" before them. (See 15 & 16 Vic. c. 80, s. 30.)

(*e.*) The "Clerks" to the Judges in the Queen's Bench Division (now the one Common Law Division of the High Court of Justice). (See 22 Vic. c. 16.)

The "Official Solicitor," visiting the City prison (Holloway), may also administer oaths to prisoners there confined, and to other persons, in relation to any such prisoner's contempt of Court. (See *Dan. Chan. Pr.*, 5th edition, p. 427.)

The "Keepers" of every prison within the City of London, or the Bills of Mortality, and their deputies, can likewise administer oaths, "for the purpose of taking and receiving such affidavits as any person or persons within any such prison shall be willing and desirous to make, and for no other purpose." (See *Daniell's Chancery Practice*, 5th edition, pp. 647 and 648.)

(2.) *In England and Wales.*

Before any "Commissioner to administer oaths in the Supreme Court of Judicature in England." (See 36 and 37 Vic. c. 66, s. 82.)

Also before the District Registrars, in any proceedings assigned to them. (See "The Supreme Court of Judicature Act, 1873," section 62.) As to the localities of the District Registries see the Schedule to the "Rules of the Supreme Court (Costs)," 12th August, 1875.

Commissioners in England and Wales can act also in proceedings pending in the Supreme Court of Judicature in Ireland. (See section 74 of 40 & 41 Vic. c. 57.)

(3.) *In Scotland, Ireland, the Isle of Man, and the Channel Islands.*

Before any Judge, Court, Notary Public, or person lawfully authorised to administer oaths in such country or place. (See 15 & 16 Vic. c. 86, s. 22; also 6 & 7 Vic. c. 82; 16 & 17 Vic. c. 78; and 22 Vic. c. 16.)

These functionaries can act also in proceedings pending in the Supreme Court of Judicature in Ireland. (See section 74 of 40 & 41 Vic. c. 57.)

(4.) *In Foreign parts under the Dominion of Her Majesty.*

Before any Judge, Court, Notary Public, or person lawfully authorised to administer oaths, in any Colony, Island, Plantation, or Place, in such parts, and "the Judges and other officers" of the Court are to "take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, Notary Public, or person

attached, appended, or subscribed" to any affidavit to be used in the Court. (See 15 & 16 Vic. c. 86, s. 22.)

These functionaries can act also in proceedings pending in the Supreme Court of Judicature in Ireland. (See section 74 of 40 & 41 Vic. c. 57.)

NOTE.

The English Bankruptcy Court Rules—1st January, 1870,—the Rules made under the "Merchant Shipping Act, 1876,"—and the Treasury Regulations, dated August, 1870, made under the Naturalization Acts,—and section 27 of the "Stamp Act, 1870," contain provisions identical (substantially) with the above referred to provisions of 15 & 16 Vic. c. 86, s. 22,—as also with those referred to under the next following sub-divisional heading (5).

The following is a List of the Places in Foreign Parts under the Dominion of Her Majesty:—

CHANNEL ISLANDS.

Isle of Man.
Jersey.
Guernsey.

EAST INDIES.

Bengal }
Bombay } The Presidencies of.
Madras }

EUROPE (*h*).

Gibraltar.
Heligoland.
Malta and Gozo.

ASIA (*h*).

Ceylon.
Hong Kong.
Singapore }
Penang } Straits Settlements.
Malacca }
Labuan.

AFRICA (*h*).

Cape of Good Hope.
Gambia.
Gold Coast (including Protectorate).
Lagos.
Natal.
St. Helena.
Sierra Leone.
Mauritius.
Griqualand West.
Transvaal.

AMERICA (*h*).

Bermuda.

Dominion of Canada:
British Columbia.
Ontario.
Quebec.
Manitoba.
New Brunswick.
Nova Scotia.
Prince Edward Island.
North and West Territory Islands in the Arctic Ocean and Hudson's Bay.

(*h*) See Fairfield's "Colonial Office List" for 1880, p. 18.

AMERICA—*continued.*

Newfoundland.
British Guiana.
Honduras.
Falkland Islands.

WEST INDIES (*i*).

Antigua.
Bahamas.
Barbadoes.
Dominica.
Grenada.
Jamaica.
Montserrat.
Nevis.
St. Christopher.
St. Lucia.
St. Vincent.
Tobago.
Trinidad.
Turk's Islands.
Virgin Islands.

AUSTRALIA (*i*).

New South Wales and Norfolk Island
Victoria.
Queensland.
Tasmania.
South Australia.
New Zealand.
Western Australia.
Fiji.

(*i*) See Fairfield's "Colonial Office List" for 1880, p. 18.

(5.) *In Foreign parts out of Her Majesty's Dominions.*

Before any of Her Majesty's Consuls or Vice-Consuls (see 15 & 16 Vic. c. 86, s. 22, and 6 Geo. 4, c. 87, s. 22), also before any other British Minister abroad—but only in the country or place in which he exercises his functions as such Minister (see 18 & 19 Vic. c. 42, s. 1, and 6 Geo. 4, c. 87, s. 22); and proof of the authenticity or genuineness of the seal or signature of any such Consul, or Vice-Consul, or of the seal and signature of any other British Minister is not required. (See the above Acts.)

Before the Judicature Acts came into operation, it was the practice to require that, in cases where an Affidavit, sworn to in Foreign Parts out of Her Majesty's Dominions, was sworn before some person other than a Consul or Vice-Consul, or other British Minister, verification of such person's authority should be furnished by a Consul or Vice-Consul, or other British Minister, and annexed to the Affidavit. Since the Judicature Acts, however, the proviso of section 31 of the Act 21 & 22 Vic. c. 95, applicable to the Probate Court, has, under the authority of section 76 of the English Judicature Act, 1873, been applied in such cases—and, in so applying it, the practice has been, and is, to receive and file Affidavits taken abroad, before Foreign authorities, with-

out requiring any such verification to be furnished—and section 71 of the Irish Judicature Act, 40 & 41 Vic. c. 57, is similar in its provisions to section 76 of the English Judicature Act, 1873.

NOTE.

Agreeably with the above, it was, in *Kevan* v. *Crawford*—45 L. J. ch., p. 658—held, on appeal, that affidavits were properly sworn before a *juge de paix,* and certain other officials in Belgium. And in *O'Neill* v. *Doran,*—a case in Ireland (L. R., 10 Equity, 187)—the Certificate of the Clerk of the Circuit Court of the County of Walworth, Wisconsin, United States, was accepted.

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3. CASES IN WHICH COMMISSIONERS MAY ACT.

NOTE.—*It will not be supposed that the following enumeration of cases embraces every case in which the Commissioners are empowered to act. The enumeration, greatly amplified in the present edition, will, however, it is thought, be sufficiently guideful to them in the exercise of their powers.*

Commissioners may administer oaths "in all causes and matters whatsoever which may from time to time be depending in the High Court of Justice or in the Court of Appeal" (*k*) (see 36

(*k*) As to any supposed territorial limit or area, see subsection 1 of this section, intituled "Extent of Jurisdiction."

& 37 Vic. c. 66, s. 82), and the term "oath" shall "include solemn affirmation and statutory declaration." (See 36 & 37 Vic. c. 66, s. 100 (interpretation clause); see also 5 & 6 Wm. IV. c 62, s. 18.)

Some observations respecting Statutory Declarations will be found in the Note appended to this sub-section. (See p. 38.)

"All answers, disclaimers, examinations and affidavits in causes or matters depending in the High Court of Justice or Court of Appeal (in Ireland), and also acknowledgments required for the purpose of enrolling any Deed in any of the said Courts, or Affidavits to Memorials for the purpose of registering Deeds in Ireland, shall and may be sworn and taken" before any person lawfully authorized to administer oaths in England or Scotland. (See 40 & 41 Vic. c. 57, s. 74.)

The same section contains similar provisions applicable to and by persons lawfully authorized to administer oaths in "the Isle of Man, or the Channel Islands;" and "in any colony, island, plantation or place under the dominion of Her Majesty in Foreign Parts;" also to and by "any of Her Majesty's Consuls or Vice-Consuls in any Foreign Parts out of Her Majesty's dominions."

The Landed Estates Court (Ireland) being merged in the Irish Supreme Court of Judicature, both English and Irish Commissioners can, it is thought, under section 74 of the Irish

Judicature Act, take affidavits, &c., to be used in proceedings pending before the "Land Judges" in Ireland—notwithstanding that, by section 7 of that Act, the rules, orders, and practice of the Landed Estates Court, are, until altered by authority, to "continue to be used." Otherwise, section 34 of the Landed Estates Court Act, 21 & 22 Vic. c. 72, would seem to limit the power to take affidavits in proceedings before the "Land Judges" to Commissioners in Ireland, and to such other persons there or elsewhere, as may, under the authority of such section, have been specially appointed by the "Land Judges" for the purpose.

The Commissioners may also take Affidavits in proceedings on Appeal to the House of Lords—and the Bond or Recognizance given as security for costs on such Appeals may be executed before such Commissioners; also before the like Commissioners in Ireland, or before a Justice of the Peace in Scotland. (See Locock Webb's "Practice of the Supreme Court," page 691.) Receiver's Recognizances may also be taken by such Commissioners.

Notwithstanding that, for the present, the practice in the Probate, &c., Division of the High Court of Justice is regulated by Rules distinct from those of the Supreme Court, the Commissioner may take Affidavits in proceedings pending in that Division, as in those pending in the other Divisions of the High

Court; and may also attest the execution of an Administration Bond.

The Commissioners may take affidavits to be used in proceedings in Lunacy—in the County Courts (see 19 & 20 Vic. c. 108, s. 58), —in the Ecclesiastical Courts in England (see 40 & 41 Vic. c. 25, s. 18)—in the "Borough and Local Courts of Record" (see 35 & 36 Vic. c. 86, s. 5)—in "all suits and matters whatsoever in the Chancery of the County Palatine of Lancaster" (see 16 & 17 Vic. c. 78, s. 7)—also in Bankruptcy matters (see the Bankruptcy Court Rules, 1st January, 1870, particularly rule 157). But, so far as proceedings in the *Irish* Court of Bankruptcy are concerned, it seems questionable whether any but persons "appointed by the Court of Chancery in Ireland" can, in England or Scotland, take affidavits in such proceedings. See section 366 of "The Irish Bankruptcy and Insolvent Act, 1857" (20 & 21 Vic. c. 60), which section was not repealed by "The Bankruptcy (Ireland) Amendment Act, 1872" (35 & 36 Vic. c. 58). And, moreover, the practice and procedure of the Court of Bankruptcy in Ireland remains unaffected by "the Supreme Court of Judicature Act (Ireland), 1877" (40 & 41 Vic. c. 57, s. 8).

The Commissioner may also act in proceedings under "The Merchant Shipping Act, 1876" (39 & 40 Vic. c. 80), and the "Court of Survey" and "Shipping Casualties" Rules

made thereunder—in proceedings under the Mutiny Acts (see 41 & 42 Vic. c. 10, s. 96, and 41 & 42 Vic. c. 11, s. 94)—and in matters under "The Stamp Act, 1870" (33 & 34 Vic. c. 97—see particularly section 27).

The Declaration required under "The Patent Law Amendment Act, 1852" (15 & 16 Vic. c. 83), may also be made before such Commissioners. (See Form of such Declaration in the schedule to the Act; also section 54 of the Act.)

The Oath of Allegiance required by the Naturalization Acts, 33 Vic. c. 14, and 33 & 34 Vic. c. 102, and regulated by the Treasury Regulations, dated August, 1870, made thereunder, may likewise be taken before such Commissioners.

Acknowledgments of Deeds requiring Inrolment may also be taken by them. But acknowledgments by married women cannot be taken by them. Such acknowledgments are taken either by the Judges, or by persons specially appointed as "Perpetual Commissioners"—consideration of whose appointment, powers, and duties comes not within the scope or intention of this Manual.

It has been urged upon the attention of the author that the Promise and Declaration required by the Acts for the amendment of the Law of Evidence may be made before a Commissioner to administer oaths. If so, any such practice could, of course, be applied only in cases

where the subject-matter of the Evidence is embodied in some written Document. Certainly, the words "Court of Justice" and "presiding Judge," occurring in section 4 of "The Evidence Further Amendment Act, 1869" (32 & 33 Vic. c 68), are, by section 1 of "The Evidence Amendment Act, 1870" (33 & 34 Vic. c. 49), "deemed to include any person or persons having by Law authority to administer an oath *for the taking of Evidence.*"

The author ventures to think that the words here italicized govern the definition, and limit the application of it to the oath usually administered preliminarily to the giving of Evidence orally in Court. However, such a written Declaration, embodying the intended Evidence, was made, under the Evidence Acts, before a Commissioner to administer oaths, and used seemingly without objection, in *Re Besant*, M.R., 18th May, 1878. See Reg. Lib., 1878, fo. 993 (written Orders). Information is, therefore, here given on the subject, and a Form of Declaration applicable is also included in Part II.—the Commissioner being left to exercise his own discretion in following the case above referred to.

It would seem, too, that the Certificate of a Commissioner to administer oaths—certifying to the official character of a copy of any Document made by the Supreme Court of Judicature in England—will be accepted in France; but the Commissioner must first have been

identified at the French Consulate in England. The Certificate, and the Document certified, may both be in the English language. A Form of such Certificate is given in Part II.

And where a German, resident in England, seeks exemption from Military service in Germany (though called upon), on the ground of unfitness for such service—and a letter to that effect is written by some respectable person, resident in England, and known to the German Consul in England—the Certificate of a Commissioner to administer oaths in England verifying the signature to such letter will be accepted. A Form of such Certificate is given in Part II.

NOTE.

(Respecting Statutory Declarations.)

The restrictive construction still insisted on by some in reference to section 18 of the Act 5 & 6 Wm. IV. c. 62, may here be appropriately and somewhat fully considered.

It has been contended that the expression, "or other officer now by law authorised to administer an oath," occurring in that section, necessarily limits the power to take statutory declarations under that Act to that class of officers or Commissioners who, *at the date of*

the passing of the Act, had power to administer an oath, and, consequently, that any class of Commissioners created subsequently to the passing of the Act have no such power.

It has been further contended that, although by virtue of the Interpretation Clause (100) of the Judicature Act, 1873, the term "oath" is to include "statutory declaration," still, power to take a statutory declaration is not thereby or thereunder acquired, where such power was not previously possessed, the intention of the definition being simply to preserve or secure the power to those Commissioners who theretofore had possessed it, and that it might not be supposed that the mere mention of "oaths" in section 82 of the Act (the section referring to the "powers" of the Commissioners), deprived *them* of that power (*l*).

And another construction, even still more restrictive, has been suggested, to the effect that the word "now" limits the exercise of the power given by the Act to those persons only who, at the date of the commencement of the Act, held office empowering them to administer oaths. Such a construction must, however, it is thought, be at once discarded, as being not only at variance with the spirit and intention of the Act, but subversive of its main provision, for, if accepted and applied, it must, sooner or later, render the Act a dead letter,

(*l*) See the *Solicitor's Journal*, vol. 19, p. 930.

inasmuch as it may fairly be assumed that very few of the *persons* who, at the date of the commencement of the Act, held the office of Justice of the Peace or Notary Public, or other office conferring power to administer oaths, are now living.

But an *office* may be transmitted and continued, and its powers preserved, though *individual possessors* of it may have passed away, and the writer ventures to think that the Act points rather to an *office* than to the holder of it; and, consequently, that that is the proper construction of the Act in question, which recognises in it the prescription (so to speak) of the office, or qualification necessary for giving effect to its provisions. What, then, is the qualification to be possessed by the person exercising the power? The Act says that he must hold the office of Justice of the Peace, or Notary Public, or *other office* lawfully constituted, and which carries with it the power to administer an oath, and the fair, reasonable, and convenient construction seems to be, that the "now" is a continuing "now," so long as the Act speaks, that is, so long as it remains unrepealed, and that so long as *any* Justice of the Peace, for the time being, or *any* Notary Public, for the time being, or *any* other person who, for the time being, shall hold an office which carries with it the power to administer an oath, for so long shall such person have power also to take a Statutory Declaration.

It is unquestionable that, at the date of the commencement of the Act, there were in existence "officers" lawfully authorised to administer oaths in aid of the proceedings in the several Courts of Law and Equity. It is equally unquestionable that such "officers" were recognised by the Act as qualified to give effect to its provisions, and empowered accordingly; and it may, perhaps, not unreasonably, be argued that the appointment of "London Commissioners to administer oaths in Chancery" under the Act 16 & 17 Vic. c. 78, and of "London Commissioners to administer oaths in Common Law," under the Act 22 Vic. c. 16, did not, after all, *create new offices*, but simply conferred upon others powers like unto those then already possessed by some, and exercised in places *beyond* ten miles from Chancery Lane. Indeed, the effect of appointing "London Commissioners" was simply to swell the number of Commissioners, in further aid of the same Courts, the duties being in both cases precisely similar. (See as to the Common Law Courts the preamble to the Act 22 Vic. c. 16.)

Apart, however, from any view which may be taken of section 18 of the Act 5 & 6 Wm. IV. c. 62, it is thought that sections 82 and 100 of the Judicature Act, 1873, justify the conclusion that *all* the Commissioners referred to in section 82 now have like powers. Certainly it no more conflicts with the words

of limitation occurring in paragraph 2 of section 77, as to holding office "upon the same terms and conditions" as if the Act had not passed, to regard *all* the Commissioners authorised to administer oaths in proceedings in the Supreme Court as having power also to take statutory declarations—whether every one of them had previously possessed that power or not—than to regard them as having power to traverse (so to speak) the proceedings in all the divisions of the Supreme Court, notwithstanding that on the 1st November, 1875, many of them held Commissions from some only of the Consolidated Courts—to give which extended jurisdiction seems to be the obvious intention of section 82.

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4. Circumstances under which a Commissioner may not Administer an Oath.

A Commissioner may not take an affidavit, &c., in any cause or matter in which he is concerned as solicitor, or where he is clerk to the solicitor for any of the parties. (See *Re Hogan*, 3 Atkins, 812; also *Wood* v. *Harper*, 3 Beavan, 290; and *Hopkin* v. *Hopkin*, 10 Hare, App. p. 2; also *The Duke of Northumberland* v. *Todd*, 26 W. R. (1877–78), p. 350.)

In *Re Hogan* the solicitor had taken all the affidavits before himself, notwithstanding he had been solicitor throughout in the cause.

The Lord Chancellor said: "If I had known this at the time I would not have suffered the affidavits to be read. At common law it is always objected to and discountenanced, and equally so in equity, from the inconvenience that would arise if such a practice were suffered." For this reason, among others, the petition was dismissed with costs, to come out of the pocket of the solicitor who thus improperly took the affidavits.

In *Wood* v. *Harper*, on a motion to commit the defendant for breach of an injunction, it was proposed to read certain affidavits—but this was objected to on the ground that the affidavits in question had been taken before a Commissioner who acted as clerk to the plaintiff's solicitor. The Master of the Rolls rejected the affidavits on the ground stated.

But an affidavit sworn to by a plaintiff before his own clerk (a Commissioner) is admissible if he does not sue in person, but is represented by another solicitor. (See *Foster* v. *Harvey*, W. R., Vol. 11, No. 37, p. 899.)

In *Hopkin* v. *Hopkin* a writ of *ne exeat regno* and the proceedings thereupon were discharged, on the ground that the affidavits had been sworn before the plaintiff's solicitor.

In *The Duke of Northumberland* v. *Todd*, the firm (a member of which had taken affidavits in the action) were not the solicitors on the record in this particular action, but had acted in the subject-matter of the action before

its commencement—and during its continuance one of the partners had collected evidence and prepared affidavits, but he was not the member of the firm before whom the affidavits had been sworn. The Vice-Chancellor (Hall) in delivering judgment, upholding the objections to the admissibility of the affidavits, said:—"It is a point of some practical and general importance" . . . . . "it is a question of principle, and not of mere technicality. I may say that the cases are collected and commented on, nearly all of them, if not all of them, in *Ross* v. *Shearman*, 2 C. P., Coo. 172."

The Probate, &c., Division Rules likewise provide that "no affidavit is to be deemed sufficient which has been sworn before the party on whose behalf it is offered, or before his or her solicitor, or before a partner or clerk of his or her solicitor." And the same regulation is applied to solicitors and their clerks acting for any other solicitor.

Similar restrictions likewise formerly prevailed at Common Law.

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5. Mode of Administering the Oath.

Oaths should be administered in a reverent manner. This was expressly provided for as to oaths administered in proceedings in the

late High Court of Chancery (see C. G. O. 19, r. 14); and may, of course, be usefully observed in relation to proceedings in the Supreme Court.

It may be stated, in general terms, that an affidavit may be sworn to on a Sunday. The Courts have certainly permitted such affidavits to be used, but it is believed that such permission would be afforded only where it can be shown that the condition of the deponent, rather than the exigencies of the suit, rendered the taking of his evidence on that day a "work of necessity." Consent between the parties has also usually existed in such cases.

A Christian swears on the Holy Evangelists, a Jew upon the Pentateuch or Five Books of Moses. A complete Testament need not be used in either case.

A Christian, in making oath, holds the book in his right hand, the hand being uncovered, and, in the case of a male person, the head being uncovered also.

A Jew, in making oath, holds the book in his right hand, the hand being uncovered, but the head covered. If, however, he desires to make oath with his head uncovered, the Commissioner must comply.

As to cases involving special and peculiar formalities, the necessary information will be found prefixed or appended to the Forms applicable thereto.

6. Re-swearing Affidavits.

Any Affidavit sworn to may be re-sworn at any time before it is filed. If, on re-swearing, a second or further jurat is written commencing with the word "re-sworn," the first or former jurat must not be struck out or in any manner interfered with. But if such further jurat commences with the word "Sworn," that is, if the jurat used on re-swearing is precisely similar in form to that used when the Affidavit was first sworn to, then the first or former jurat must be struck out, and such striking out must be authenticated by the initials of the Commissioner before whom it is subsequently sworn.

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7. Commissioners' Charges (*m*).

The following charges may be made by Commissioners for administering oaths, &c.:—

	£	s.	d.
"For every oath, declaration, affirmation, or attestation upon honour, in London or the country" . . .	0	1	6
"The Commissioner for marking each exhibit" . .	0	1	0 (*n*)

(*m*) The charges allowed to Commissioners in Ireland are shown on p. 13.

(*n*) Whether annexed or not: but for explanation of this see the observations which follow these items.

These charges are allowed to be made by solicitors who are "Commissioners to take Oaths or Affidavits" under the "Rules of the Supreme Court (Costs)," 12th August, 1875.

It is assumed that the similar provisions in the "Order as to Court Fees," dated 28th October, 1875, are intended to regulate the fees to be taken by those officers of the Court who are attached to the several departmental offices of the Court, and authorised by virtue of their office to take oaths or affidavits; and, with reference to "exhibits," such "Order as to Court Fees" explains that the fee of 1s. is to be taken for "each exhibit therein referred to, and required to be marked, whether annexed or not." Hence, for every *document* or *thing* referred to in an affidavit sworn before one who is, in a technical or departmental sense, an officer of the Court, and required to be "marked," or signed by him, the fee of 1s. is taken, and although the words "whether annexed or not" are not added to the similar item in the "Rules of the Supreme Court (Costs)," regulating the charge to be made by solicitors who are "Commissioners to take Oaths or Affidavits," still, it is thought that such Commissioners may take the like fee for every like "exhibit," and for the following reason:—Each "exhibit" means each document or thing referred to, whether referred to as "produced and shown" or as "hereunto annexed." And in either case a memorandum should be written upon, or

affixed to, the document or thing for the purpose of identifying it with the particular affidavit to which it relates (*o*), and it is for marking, or signing, such memorandum that the fee of 1s. may be taken by the Commissioner.

The merely initialing a document (making no charge therefor) is a most undesirable practice, inasmuch as the initials of the Commissioner alone do not sufficiently and properly identify the document as *the particular document* referred to in the particular affidavit.

The Commissioner may not, however, charge 1s. for signing his name to each *schedule* that may be appended to an affidavit, although his signature is essential for the purpose of identifying such schedules as part of the affidavit, and as having been appended at the time the affidavit was sworn to before him. The not allowing the Commissioner to charge for this, but only for signing the jurat and each memorandum of exhibit, has, probably, the following reason in its favour, viz:—That the Commissioner is, in theory, supposed himself to write out such jurat and memorandum, and not merely sign his name thereto. Certainly the Commissioner is responsible for the accuracy of both, each being, in a sense, his own certificate.

	£	s.	d.
"On taking a recognizance or bond"	0	10	0

(*o*) For form of Memorandum, see Part II.—Forms—"Exhibit."

The foregoing charge is not provided for by the "Rules of the Supreme Court (Costs)," but it represents the amount of the fee to be taken by the Departmental officers of the Court in like cases, under the "Order as to Court Fees," 28th October, 1875, and it is presumed, therefore, that the like amount of charge would be allowed on taxation to a Commissioner performing the like duty.

	£	s.	d.
"For each occasion of attesting the execution of an administration bond" . . .	0	1	6

(See Probate Rules, February, 1874.)

	£	s.	d.
"On taking the Oath of Allegiance"	0	2	6

(See the Treasury Regulations, dated August, 1870, made under the Naturalization Acts, and more particularly referred to in Part II., FORMS, "Oath of Allegiance.")

	£	s.	d.
"On taking an acknowledgment of a deed, to be enrolled" .	0	5	0

This charge is not provided for by any recent General Order. It was prescribed by Lord Hardwicke's Order, 28th Nov., 1743 (see Beames' Orders, p. 435), and it is understood that, in hostile taxations, Lord Hardwicke's order would probably be relied upon as the *authority* upon the subject.

On attendance elsewhere than at the Commissioner's own place of business or residence.

"As to affidavits, where there are several Deponents to be sworn, or it is necessary, for the purpose of an affidavit being sworn, to go to a distance, or to employ an agent, such reasonable allowance may be made as the Taxing Officer in his discretion may think fit." (See "Rules of the Supreme Court (Costs)"—12th August, 1875—under heading "Special Allowances.")

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8. Duration of the Commission.

The question whether a solicitor, who has obtained an appointment as a Commissioner to administer oaths, is empowered to act as a Commissioner only so long as he shall continue to practise as a solicitor, having frequently demanded attention, a somewhat full consideration of it suggests the following remarks:—

The only statement upon the subject bearing the impress of authority, which the writer has met with, is in "Lush's Common Law Practice," 2nd edition (1856), p. 642, where the following occurs: "These Commissions (*i.e.*, Commissions to take affidavits) continue in force until revoked, notwithstanding the demise of the Crown, and notwithstanding the attorney has ceased to practise."

It would seem, however, that this perpetuity can only apply in certain cases, and that any satisfactory determination of the general question necessitates a reference to the terms of the Commissions themselves.

By the express terms of Commissions granted under the Act 16 & 17 Vic. c. 78, the person appointed a "London Commissioner to administer oaths in Chancery," is such "*so long as he shall continue to practise as a solicitor.*"

By the express terms of Commissions granted under the Act 22 Vic. c. 16, the person appointed a "London Commissioner to administer oaths in Common Law," is "to have, enjoy, and exercise the said office of our Commissioner as aforesaid, and the power and authority as aforesaid, *so long as it shall please us.*"

By Commissions granted under the authority of section 84 of the Judicature Act, 1873, the Lord Chancellor doth "appoint——of——, being a practising solicitor, to be a Commissioner to administer oaths in the Supreme Court of Judicature in England *so long as he shall continue to practise as a solicitor.*" (See Form of Commission on pp. 8 and 9.)

The proper conclusion seems to be that, in the one class of cases, the Commission can be formally revoked only by a decision emanating from the source from whence it was derived, and these are the cases to which the statement above quoted from "Lush's Common Law Practice" applies, and that in the other class of

cases, the Commission becomes virtually revoked by an act, which, if done before Commission obtained, would have disqualified the person receiving it—in other words, the holder of the Commission (in the latter class of cases) is no longer a Commissioner if he be no longer a practising solicitor.

When, then, may it be said that a solicitor is not a practising solicitor? It is clear that the actual exercise of his profession alone qualifies a solicitor to *receive* the Commission. He must be a "practising" solicitor. The expression is used in the petition and certificates accompanying the application for the Commission, the intention evidently being that the person qualified to be a Commissioner shall be one qualified to be a solicitor. Further, a solicitor may be said to *continue* to practise only while he is both on the roll and in possession of the usual annual certificate or licence; for it is this double possession (so to speak) which duly qualifies him to pursue his profession actively and with personal advantage.

But may not the words, "so long as he shall continue to practise as a solicitor," fairly, reasonably, and usefully be construed to mean "until he shall cease to be a solicitor?" This suggestion may serve as a guide in pursuing the following further argument, here presented solely with a view to assist Commissioners in their consideration of the question.

A solicitor may, through illness or accident, or for some other good and sufficient reason, *suspend* his practice for a time. Still, he does not, by suspending practice, necessarily cease to be a solicitor, for he may renew his certificate and resume practice at any time, if still on the roll; and it would be a most inconvenient consequence of any temporary suspension of his practice, if such a suspension necessarily carried with it a suspension also of the exercise of the powers conferred by any Commission to administer oaths held by him. Indeed, the terms of the Commissions (now under consideration) do not, if strictly construed, admit of even any temporary suspension of the power conferred by them, but expressly authorise the exercise of that power only "*so long* as he (the Commissioner) shall *continue to practise* as a solicitor"—language, a strict, technical construction of which, might involve the conclusion that any Commission thus expressed necessarily becomes revoked from the first moment the holder of it shall *discontinue* practice as a solicitor, whether temporarily or otherwise. But this can scarcely be the intended meaning of the words "so long as he shall continue to practise as a solicitor." The severest admissible construction of such words could involve no other conclusion than the following—viz., that while the person holding the Commission is not actively pursuing the practice of his profession as a solicitor, he ought

not to *act* upon his Commission; but it is thought that the proper, and certainly more reasonable and convenient, conclusion would be the one above suggested, viz., that a solicitor, appointed to be a Commissioner for "so long as he shall continue to practise as a solicitor," is empowered to exercise his functions as a Commissioner until he shall cease to be a solicitor, that is, until either at his own instance, or by the action of others against him, his name is actually struck off the roll.

Where a person—a Consul, or Vice-Consul, for instance—holding a particular office, and, under certain statutory provisions, is authorised to administer oaths by virtue of such office, ceases to hold office, such authority, of course, ceases too. But these cases come not within the scope or intention of the foregoing observations, and need not, therefore, be further referred to or considered.

PART II.

FORMS OF JURATS AND OATHS, &c.

ACKNOWLEDGMENTS.

No. 1.

Acknowledgment of Specification of Patent of Invention.

FORM OF CERTIFICATE.

Taken and acknowledged by —— as his hand and seal, and this instrument his Specification of Invention which he desires to have inrolled, at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF ACKNOWLEDGMENT.

Is this your hand and seal?

You acknowledge this to be your hand and seal, and this instrument your Specification of Invention which you desire to have inrolled.

No. 2.

Acknowledgment of Specification of Patent of Invention, by a Foreigner, through an Interpreter.

FORM OF CERTIFICATE.

Taken and acknowledged by ——, party hereto through the interpretation of ——, of ——, in the county of ——, the said —— having been first sworn that he had truly and faithfully interpreted the contents of this Specification, and also the nature and purport of this Acknowledgment, to him the said ——, at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

(*To the Interpreter.*)

You do swear that you have truly and faithfully interpreted the contents of this Specification to the said ——, and that you will also truly interpret the Acknowledgment about to be given by the said —— to this Specification—So help you God.

FORM OF ACKNOWLEDGMENT.

(*To the Foreigner.*)

Is this your hand and seal?

You acknowledge this to be your hand and

seal, and this instrument your Specification of Invention which you desire to have inrolled.

No. 3.

Acknowledgment for Inrolment of Copy of Court Roll.

Form of Certificate.

Taken and acknowledged by ——, the Steward of the said Manor, as a true copy of the entries on the Court Roll of the said Manor, at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

Form of Acknowledgment.

You acknowledge this to be your name and handwriting, and that you are the Steward of the Manor of ——, and that this is a true copy of the entries on the Court Roll of the said Manor

No. 4.

Acknowledgment of a Deed to be Inrolled (*a*).

FORM OF CERTIFICATE.

Taken and acknowledged at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF ACKNOWLEDGMENT.

You acknowledge this to be your hand and seal, and this instrument to be your act and deed which you desire to have Inrolled.

AFFIDAVITS.

No. 5.

To an Affidavit by one Deponent.

FORM OF JURAT.

Sworn at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

(*a*) Acknowledgments by Married Women are to be taken either by the Judges or by persons specially appointed and styled "Perpetual Commissioners."

FORM OF OATH.

Is that your name and handwriting?

You do swear that the contents of this your Affidavit are true—So help you God.

No. 6.

To an Affidavit by Two or more Deponents.

FORM OF JURAT (b).

Swore by the deponents, ——, ——, and ——, at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

(*To each Deponent.*)

Is that your name and handwriting?

(*To all the Deponents.*)

You do severally swear that the contents of this your affidavit are true—So help you God.

(b) If all the deponents are not sworn at the same time, then a separate jurat must be written for each occasion on which the oath is administered.

No. 7.

To an Affidavit by a Peer (c).

FORM OF JURAT.

Sworn at ——, in the county of — —, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

Is that your lordship's name and handwriting?

You do swear that the contents of this your Affidavit are true—So help you God.

No. 8.

To an Affidavit by a "Marksman."

FORM OF JURAT.

Sworn at ——, in the county of ——, this —— day of ——, the Witness to the mark of the deponent (d) having been first sworn that

(c) An Affidavit is, in all cases, to be sworn to by a Peer—not declared upon honour.

(d) If the Affidavit is read over to the deponent by the Commissioner himself, and not by another person, leave out such parts of the Form as refer to the oath of the Witness, and instead thereof say, "I having first truly, distinctly and audibly, &c., and that he, the deponent—seemed perfectly to understand the same," and conclude thus:—"and made his mark thereto in my presence."

he had truly, distinctly, and audibly read over the contents of the above affidavit (*e*), to the said deponent, who seemed perfectly to understand the same, and that he saw him make his mark thereto.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

(*To the Witness.*) (*f*)

Is that your name and handwriting? (*g*)

You do swear that you have truly, distinctly and audibly read over the contents of this Affidavit to the deponent ——, and that you saw the said —— make his mark thereto—So help you God.

(*To the Deponent.*)

Is that your mark?

You do swear that the contents of this your Affidavit are true—So help you God.

(*e*) Where exhibits are referred to in an Affidavit made by a "marksman," add, "and explained the nature and effect of the exhibits therein referred to."

(*f*) The oath of the Witness will of course be unnecessary in cases where the Commissioner himself reads and explains the affidavit to the deponent.

(*g*) The form of attestation by the Witness should be written near the Jurat—and may be as follows :—

"Witness to the mark of the said——,
"—— of, &c."

NOTE.

"Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his or her signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent." (See "Rules of the Supreme Court, April, 1880," rule 17.)

No. 9.

To an Affidavit (h) by a Foreigner through an Interpreter.

FORM OF JURAT (*i*).

Sworn at —— in the county of ——, this —— day of ——, through the interpretation of

(*h*) The Forms under this number are applicable where the Affidavit is written in the English language. If written in a Foreign language, some competent person in England must translate the Affidavit, and make affidavit verifying the translation, and the three documents will then be filed together.

(*i*) For Forms of jurats where the Foreigners are Hindu and Chinese, see Forms Nos. 10 and 11.

——, of ——, the said —— having been first sworn that he had truly and faithfully interpreted the contents of this affidavit to the deponent ——, and that he would truly and faithfully interpret the oath about to be administered unto him the said ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

(*To the Interpreter.*) (*k*)

You do swear that you well understand the —— language, and that you have truly, distinctly and audibly interpreted the contents of this Affidavit to the deponent ——, and that you will truly interpret the oath about to be administered unto him—So help you God.

(*To the Deponent—through the Interpreter.*)

Is that your name and handwriting? You do swear that the contents of this your Affidavit are true—So help you God.—(*See, however, the next following Note.*)

NOTE.

There may be cases of Foreigners in which, possibly, this form of concluding words may

(*k*) The interpreter need not sign the Affidavit.

not be appropriate. The Commissioners must, therefore, in all such cases exercise some discrimination, as suggested by the NOTES appended to the next two Forms—Nos. 10 and 11.

No. 10.

(*To an Affidavit by a Hindu*).

FORM OF JURAT.

Subscribed with a seal, and sworn to by the above-named A. B., at ——, in the county of ——, through the interpretation of C. D., of &c., he the said C. D. having been previously sworn that he had first translated and explained to the said A. B., the contents of this Affidavit in the Hindostanee language, and that he the said A. B. perfectly understood the contents of the same, and that he the said C. D. would truly interpret the oath about to be administered to him the said A. B., and that the seal used by the said A. B. was his own signet, wherewith he always signed documents, according to the custom of his own country.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

(*To the Interpreter.*) (*a*)

You do swear that you well understand the

(*a*) The Interpreter need not sign the Affidavit.

Hindostanee language, and that you have truly translated and explained to the said A. B. in the Hindostanee language the contents of this affidavit, and that he the said A. B. seemed perfectly to understand the same, and that you will truly interpret the oath about to be administered unto him, and that the seal used by the said A. B. was his own signet, wherewith he always signed documents, according to the custom of his own country—So help you God.

(To the Deponent—through the Interpreter.)

Is that your signet? You do swear that the contents of this your Affidavit are true. *(See the following Note.)*

NOTE.

In many instances natives of India make Declarations and Affirmations. This is expressly provided for in connection with proceedings under the "Army Mutiny Act" (41 & 42 Vic. c. 10, s. 96), and under the "Marine Mutiny Act" (41 & 42 Vic. c. 11, s. 94).

It would appear from Professor Levi's work on "International Commercial Law" (1863), vol. 1, page 5, that the populations of *British India* may be classed as follows:—

1. Mohammedans.
2. Hindoos.

3. Parsees.
4. Portuguese and other European races; and
5. Anglo-Indians.

Another author describes the "Races and Creeds in India" thus:—

"Aboriginal Hill Tribes.
Hindus.
Budhists.
Mahomedans.
Parsis.
Asiatics from beyond British India.
Jews.
Armenians.
Europeans, pure.
Europeans, mixed.
Native Christians (of all denominations)."

(See "Outlines of Indian History," by A. W. Hughes, 1871, p. 229.)

The above Forms applicable to the case of a Hindoo deponent can be adapted to the case of any other of the above enumerated classes, and, indeed, to any other analogous case. Such enumeration will, therefore, it is hoped, be sufficiently helpful to the Commissioner in ascertaining to what supreme authority the conscience of any such deponent appeals when making oath.

No. 11.

To an Affidavit by a Chinese.

FORM OF JURAT.

Sworn at ——, in the county of ——, through the interpretation of —— of, &c., the said —— having been first sworn that he had truly and faithfully interpreted the contents of this Affidavit to the deponent ——, and that he would truly and faithfully interpret the oath about to be administered unto him the said ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

(*To the Interpreter.*) (*b*)

You do swear that you well understand the Chinese language, and that you have truly interpreted and explained to the said ——, in such language, the contents of this Affidavit, and that you will truly and faithfully interpret the oath about to be administered unto him—So help you God.

(*To the Deponent—through the Interpreter.*)

Is that your name and handwriting? You

(*b*) The interpreter need not sign the Affidavit.

do swear that the contents of this your Affidavit are true.

The deponent in responding will take into his hand a saucer, and, kneeling, let it fall heavily on the floor, splintering it into fragments; after which he will (through the Interpreter) solemnly repeat the following words: —" I tell the truth, and the whole truth—if not, as that saucer is broken, may my soul be broken like it."

Note.

The foregoing ceremonial was observed in a case before Mr. Knox, Police Magistrate, where Chung Amaon, a servant attached to the Chinese Embassy, had been assaulted in the street (*c*).

The formula repeated in that case was dictated to the Chinese by Dr. Macartney, Secretary to the Chinese Legation, and was in the following words:—" I will tell the truth, and the whole truth—and if I do not tell the truth may my soul be broken like that saucer."

These words were, of course, appropriate as preliminary to the giving of Evidence *orally* before the Magistrate. As given in the above Form they are slightly varied to suit the case of an *Affidavit* by such a deponent.

(*c*) See *Daily Telegraph*, 2nd February, 1879.

The Forms proposed have not, of course, the sanction of authority, official or otherwise. Commissioners must, therefore, regard them as given suggestively, and simply for their guidance, in the event of any such case coming before them. And see, further, the observations in the NOTE appended to Form No. 10.

No. **12.**

To an Affidavit by a Deponent who is Blind.

FORM OF JURAT.

Sworn by the deponent ——, at ——, in the county of ——, this —— day of ——, the witness to the mark (*d*) [*or*, signature, *as the case may be*] of the said deponent having been first sworn that he had truly, distinctly and audibly read over the contents of this Affidavit to him the said deponent, he being blind, and that he saw him make his mark thereto [*or*, sign his name thereto, *as the case may be*].

Before me,
[*Name and Designation of the Commissioner*].

(*d*) See foot-note (*d*) on p. 60.

FORM OF OATH.

(*To the Witness.*) (*e*)

Is that your name and handwriting? (*e*)

You do swear that you have truly, distinctly and audibly read over the contents of this Affidavit to the deponent —— and that you saw him sign his name thereto [*or* make his mark thereto, *as the case may be*]—So help you God.

(*To the Deponent.*)

You do swear that the contents of this your Affidavit are true—So help you God.

No. 13.

To an Affidavit by a Deponent who is Deaf and Dumb.

FORM OF JURAT.

Sworn at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

Is that your name and handwriting?

You do swear that the contents of this your Affidavit are true—So help you God.

(*e*) See foot-notes (*f*) and (*g*) on p. 61.

Note.

The mode of proceeding in the case to which the foregoing Form applies is as follows:—Question the deponent, in writing, as to his name and handwriting (that is, his signature to the Affidavit), and give him the Form of Oath to read. Then let him take the book, and let the oath be administered, the Commissioner pointing to the words of the Form of the Oath as he proceeds. The deponent will then kiss the book and the ceremony is completed.

The Form and instruction given apply to a case where the person deaf and dumb is able to read and write. Should any case arise in which any such person cannot read or write, it is suggested that the Form applicable to the case of a foreigner sworn through an interpreter, together with such part of the Form applicable to a marksman, as relates to the mark of the marksman, will apply.

No. 14.

To an Affidavit by a Deponent swearing in the manner most binding on his Conscience (f).

Form of Jurat.

Sworn at ——, in the county of ——, this

(*f*) See 1 & 2 Vic. c. 105.

—— day of ——, pursuant to the Act 1 & 2 Vic. c. 105.

Before me,
[*Name and Designation of the Commissioner*].

Note.

In *Gompertz* v. *Rogers*, the defendant was sworn to his *Answer* to a Bill in Chancery on the 3rd March, 1848, being sworn in the words of the common oath, and by holding up his right hand instead of kissing the book. The defendant was a Scotchman, and took the oath as a member of the League and Covenant.

In *Attorney-General* v. *Wilson*, Chancery Reg. Lib. A. 1844, fol. 174, where an order was made, upon notice to the plaintiff, for a Commission to take the *Answer* of the defendant, he being a Scotch Covenanter, the Commissioners certified that the defendant "held up his right hand and declared to the truth of his said *Answer* as he should answer to God at the Great Day of Judgment," and he also declared "such form of oath to be most binding on his conscience." The *Answer* was filed on the 13th December, 1845.

It is presumed that the same mode of proceeding should be followed in swearing any such person who may be a deponent to an *Affi-*

davit. The Act expressly applies to *Deponents to Affidavits*, and, notwithstanding the cases above referred to, the Master of the Rolls (the late Lord Langdale) directed the Clerks of Records and Writs not to swear defendants to *Answers* under the statute 1 & 2 Vic. c. 105.

AFFIRMATIONS.

No. 15.

To an Affirmation by a Quaker.

FORM OF ATTESTATION.

Affirmed at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF AFFIRMATION.

Is that your name and handwriting?

I —— (*g*), do solemnly, sincerely, and truly declare and affirm that the contents of this my Affirmation are true.

(*g*) The Affirmant must repeat this Form of words—either by himself or after the Commissioner.

No. 16.

To an Affirmation by a Person "who shall have been a Quaker or Moravian" (*h*).

FORM OF ATTESTATION.

Affirmed by the affirmant, ——, he having been one of the people called Quakers [*or*, of the United Brethren called Moravians, *as the case may be*] at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF AFFIRMATION.

Is that your name and handwriting?

I —— (*i*), having been one of the people called Quakers [*or*, of the United Brethren called Moravians, *as the case may be*], and entertaining conscientious objections to the taking of an oath, do solemnly, sincerely and truly declare and affirm that the contents of this my Affirmation are true.

(*h*) See 1 & 2 Vic. c. 77.

(*i*) The Affirmant must repeat this Form of words—either by himself or after the Commissioner.

No. 17.

To an Affirmation by a Separatist (*k*).

FORM OF ATTESTATION.

Affirmed at ——, in the county of —— (in pursuance of the Act 3 & 4 Will. 4, c. 82), this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF AFFIRMATION.

Is that your name and handwriting?

I, —— (*l*), do, in the presence of Almighty God, solemnly, sincerely, and truly affirm and declare that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect. And I do also, in the same solemn manner, affirm and declare that the contents of this my Affirmation are true.

(*k*) See 3 & 4 Will. 4, c. 82.

(*l*) **The Affirmant must repeat this Form of words—either by himself or after the Commissioner.**

No. 18.

To an Affirmation by a Person affirming under the Provisions of the Common Law Procedure Act, 17 *&* 18 *Vic. c.* 125.

FORM OF ATTESTATION.

Affirmed by ——, at ——, this —— day of ——, pursuant to the Act 17 & 18 Vic. c. 125, before me, I having been first satisfied of the sincerity of the objection taken by the abovenamed —— to be sworn from conscientious motives.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF AFFIRMATION.

I, —— (*m*), do solemnly, sincerely and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely and truly affirm and declare that the contents of this my Affirmation are true.

(*m*) The Affirmant must himself repeat this Form of words —either by himself or after the Commissioner.

NOTE.

AFFIDAVITS AND AFFIRMATIONS.

EXPLANATORY OBSERVATIONS.

1. *Formal Contents.*

Preliminary Observation.—It has not been thought necessary to embody, separately, the provisions (analogous to the following) contained in the Rules regulating the practice in the Probate, &c., Division, and in those regulating the proceedings in Bankruptcy, inasmuch as all such provisions are identical, substantially, with the provisions of the "Rules of the Supreme Court, April, 1880," here set forth.

Every Affidavit to be used in the Supreme Court must commence with the words "In the High Court of Justice, —— Division," *or* "In the Court of Appeal," and be intituled in the Cause or Matter to which it relates. The full title of the Cause or Matter should be set forth.

Every Affidavit must be drawn up in the first person, and be divided into paragraphs, and every paragraph must be numbered consecutively, and, as nearly as may be, confined to a distinct portion of the subject. Every affidavit must be written or printed bookwise. No costs will be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Every Affidavit must state the description and true place of abode of the deponent.

In every Affidavit made by two or more deponents the names of the several persons making the Affidavit must be inserted in the jurat, except that if the Affidavit of all the deponents is taken at one time by the same officer it will be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Every Affidavit must be filed in the Central Office. There must be appended to every Affidavit a note showing on whose behalf it is filed. (See Rules 12, 13, 14, and 15 of the "Rules of the Supreme Court, April, 1880.")

Affidavits must be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. (See "Rules of the Supreme Court," Ord. 37, r. 3.)

The costs of every Affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, must be paid by the party filing the same. (See "Rules of the Supreme Court," Ord. 37, r. 3.)

Interrogatories filed under Order 31 of the "Rules of the Supreme Court" are to be answered by Affidavit (see Ord. 31, r. 6), and, if exceeding ten folios, such Affidavit must be printed. (See Order 31 of the "Rules of the

Supreme Court," r. 7, as amended by r. 11 of "The Rules of the Supreme Court, June, 1876.")

2. *How to be written or printed.*

Affidavits are, as shown on page 77, to be written on foolscap paper bookwise. But Affidavits written otherwise than as here mentioned will be received and filed, if the circumstances of the case render such reception and filing desirable or necessary (*n*).

Any Affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript. (See "Rules of the Supreme Court," Ord. 56, r. 3.)

Affidavits printed or lithographed will not be objected to if on foolscap paper bookwise.

Dates and sums may be written in figures.

3. *As to Quotations.*

Quotations may, of course, contain figures; but every quotation should be indicated by inverted commas.

4. *Alterations and Erasures.*

No Affidavit having in the jurat or body

(*n*) Such a discretionary power was conferred upon the Clerks of Records and Writs by the General Ord. 6th March, 1860, r. 16, and has since been exercised chiefly in favour of Affidavits written upon foreign paper and taken abroad.

thereof any interlineations, alteration, or erasure will, without leave of the Court or a Judge, be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the Affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the Affidavit to be written on the erasure are re-written and signed or initialed in the margin of the Affidavit by the officer taking it. (See r. 16 of the "Rules of the Supreme Court, April, 1880.")

5. *Schedules.*

If Schedules are referred to as "hereunder written," they should be placed after the jurat, and the Commissioner, or other person before whom the Affidavit is sworn, must sign his name at the end of each such Schedule as well as to the jurat.

If Schedules are placed before the jurat, they should be referred to in the Affidavit as "the Schedule [*or,* first Schedule, *as the case may be*] set forth in this my Affidavit."

If a Schedule is embodied in the Affidavit, such Schedule should be referred to thus:—"consists of the following particulars," or "of which the following is a true and correct list or Schedule," or "as follows," or in such other

terms as shall best agree with the statement of the deponent.

As to the Commissioner not charging for signing Schedules, see p. 48.

6. *Exhibits.*

An Exhibit, or a document referred to in an Affidavit, may be referred to thus:—"hereunto annexed" (*o*); or thus:—"produced and shown to me at the time of swearing this my Affidavit, and marked with the letter A." If as "produced and shown," &c., the document is not to be filed with the Affidavit. If as "hereunto annexed," the Affidavit will not be received and filed without the document.

Where the document is referred to as being "produced and shown" to the deponent, the Commissioner, before he signs the memorandum of Exhibit, should inquire of the deponent whether he has seen the document, and is aware of the contents thereof. No such inquiry is needful where the document is referred to as "hereunto annexed," but such document should be annexed at the time the Affidavit is sworn.

(*o*) But Evidence to be used in the Chambers of the Judges of the Chancery Division, such as "accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by the Affidavit, are not to be referred to as annexed, but as Exhibits."—Regulation 11, 8th August 1857.

Any document thus referred to, whether as "produced and shown," or as "hereunto annexed," must be distinguished with, or identified by, a letter, or a number, or other distinguishing mark, and a memorandum of Exhibit written thereon or fastened thereto, for the purpose of identifying the particular document with the particular Affidavit. For Form of such Memorandum, see p. 92.

The Affidavit, verifying a Receiver's account as passed in the Chancery Division, should refer to it as an Exhibit, and not be annexed to it. (See C. G. O. 24, r. 3.)

For further observations respecting "Exhibits," see pp. 93 and 94.

7. *As to the Jurat, and Signatures of the Deponent and Commissioner.*

The Jurat may be written on either side of a page, or in the margin; not, however, on a page upon which no part of the statements in the Affidavit appears.

The Rules of the Probate, &c., Division require that in every Affidavit made by two or more persons, the names of the several persons making it be written in the Jurat; and no Affidavit will be read or made use of in any matter depending in that Division in the Jurat of which there is any interlineation or erasure.

In the Chancery Division, an Affidavit, in

the Jurat of which there is any interlineation, will be received and filed if the interlineation is marked with the initials of the Commissioner before whom it is sworn.

For further information on the points referred to in the last two preceding paragraphs, see page 80, and as to the Form of Jurat applicable in the case of an illiterate person, see p. 62.

Commissioners must express (in the Jurat) the time when, and the place where, they take any Affidavit, Plea, Answer or Disclaimer, or the Acknowledgment of any deed or Recognizance, or do any other act incident to their office. In the late Court of Chancery, if these particulars were not thus expressed, the document was held not authentical, and was not to be filed or inrolled. (See C. G. O. 4.)

The name of the County must be expressed in the Jurat in all cases, except that in cases where the Affidavit is taken in a City, the name of the county *may* be omitted.

The style or Designation of the Commissioner or other person before whom an Affidavit is sworn must be set forth—as to which, more particularly, see Part I. s. 2, p. 14, *et seq*. But the style or Designation need not be in the handwriting of the Commissioner.

The deponent must affix his name (his usual signature), or make his mark, at the side of the Jurat, not above nor underneath it; and the Commissioner's Name and Designation must follow immediately after the concluding words

of the Jurat, viz., the words "before me" (*p*). If there be any Schedules, it is desirable that the deponent should, and the Commissioner *must*, sign each of them.

As to the mode of administering an oath, see pp. 44 and 45, and as to re-swearing, see p. 46.

The foregoing observations respecting Affidavits are, in most respects, equally applicable to Affirmations.

ALLEGIANCE—OATH OF.

No. 19.

FORM OF CERTIFICATE.

I do hereby certify that the within named —— has duly taken and subscribed the Oath required by the before mentioned Act (*q*) of Parliament, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

(*p*) These words are essential. See *Graham* v. *Ingleby*, 5 Dowling & L. 757; also Jurist (Digest), vol. 12, 1848; 1 Exch. Rep. 651.

(*q*) The Naturalization Act, 33 Vic. c. 14. See, also, 33 & 34 Vic. c. 102.

NOTE.

The Oath in the above case can be administered by the Commissioner only in the case of an Alien—not in the case of a Privy Councillor.

The Form of the Oath is always annexed to the Certificate of Naturalization granted by the Secretary of State, ——and, as set forth in Section 9 of the Act 33 Vic. c. 14, and in Regulation V. of the Treasury Regulations, hereafter more particularly referred to, is as follows:—

"I, ——, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria her heirs and Successors, according to Law. So help me God."

The Treasury Regulations, dated August, 1870, made pursuant to Section 1 of the Naturalization Act, 33 & 34 Vic. c. 102, are (*inter alia*) as follows:—

Regulation III. provides that "the following persons may adminster the Oath of Allegiance":—

In England or Ireland—any Justice of the Peace, or any Commissioner authorized to administer oaths in Chancery.

In Scotland—any Sheriff, Sheriff-substitute, or Justice of the Peace.

Elsewhere in Her Majesty's Dominions—any Judge of any Court of civil or criminal jurisdiction, any Justice of the Peace, any officer for the time being authorized by Law,

in the place in which the deponent is, to administer an oath for any judicial or other legal purpose.

This Regulation shall not apply to the case of the administration of an Oath of Allegiance in respect of a Declaration of British Nationality, for which case provision is made by the Naturalization Act, 1870 (33 Vic. c. 14, s. 6).

Regulation V. prescribes the Form of the Oath (as above).

Regulation VII. provides that "Every Declaration, whether of alienage or British Nationality, and every Certificate, whether of Naturalization or of re-admission to British Nationality, and every Oath of Allegiance taken with respect to a Declaration or Certificate, shall be Registered in the office of Her Majesty's principal Secretaries of State."

Regulation VIII. prescribes *2s. 6d.* as the Fee to be taken for administering the Oath of Allegiance.

CERTIFICATES.

No. 20.

Certificate (for France) as to the official character of a copy of a Document (r).

I hereby certify that this is an office (or official) copy of [*name or describe the Document*] made by the Supreme Court of Judicature in England, and that it bears the proper Seal of the said Court.

Dated, &c.

[*Name and Designation of the Commissioner*].

NOTE.

Rule 45 of the "Rules of the Supreme Court, April, 1880," provides that "all copies, certificates, and other documents appearing to be sealed with a seal of the Central Office, shall be presumed to be office copies or Certificates, or other documents, issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate or other document."

(r) See p. 37.

No. 21.

Certificate as to the Genuineness of the Signature to a Letter in favour of a Claim to be Exempted from Military Service in Germany (s).

I hereby certify that this Letter is signed by ——, [of the firm of ——, *if so*] carrying on business at ——, in the county of ——, and that the signature is in the handwriting of the said ——, and that it was signed in my presence.

Dated, &c.

[*Name and Designation of the Commissioner*].

DECLARATIONS.

No. 22.

In an ordinary Case.

FORM OF ATTESTATION.

Declared at ——, in the county of ——, this —— day of ——.

Before me,

[*Name and Designation of the Commissioner*].

(s) See p. 38.

FORM OF DECLARATION.

(*To the Declarant.*)

Is that your name and handwriting?

You do solemnly and sincerely declare that the contents of this your Declaration are true.

No. 23.

By a Foreigner, through an Interpreter.

FORM OF ATTESTATION.

Declared by the declarant ——, at ——, in the county of ——, this —— day of ——, through the interpretation of ——, of ——, the said —— having been first sworn that he had truly, distinctly and audibly interpreted the contents of this Declaration to the said declarant, and that he would truly and faithfully interpret the Declaration about to be administered unto him.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF OATH.

(*To the Interpreter.*)

You do swear that you well understand the —— language, and that you have truly, distinctly and audibly interpreted the contents of

this Declaration to the declarant ——, and that you will truly and faithfully interpret the Declaration about to be administered unto him. —So help you God.

FORM OF DECLARATION.

(To the Declarant, through the Interpreter.)

Is that your name and handwriting?

You do solemnly and sincerely declare that the contents of this your Declaration are true.

No. 24.

By a Person Declaring under the Evidence Amendment Acts.

FORM OF ATTESTATION (*t*).

I certify that under the power to me given in this behalf by the Evidence Amendment Act, 1870, I have satisfied myself that the taking of an oath by the above-named —— would have no binding effect on his [*or* her] conscience, and that the said —— made the Declaration prescribed by the Evidence Further Amendment Act, 1869, at my office situate at

(*t*) The Form here given was used in the case *Re Besant*, referred to on p. 37.

——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

FORM OF DECLARATION.

(*To the Declarant.*)

Is that your name and handwriting?

Are you an Atheist?

You disbelieve the existence of a God, or Supreme intelligent Being?

The Declarant, having answered these questions in the affirmative, must then repeat the following words, either by himself or herself, or after the Commissioner:—

"I solemnly Declare that the contents of this my Declaration are true."

NOTE.

The above Forms are given for the reasons stated in the observations on p. 37, and although the Commissioner will probably consider that the case *Re Besant* there referred to justifies his taking the Declaration of an Atheist under the Evidence Amendment Acts, the author would, nevertheless, here again invite his special attention to the express terms of section 4 of "the Evidence Further Amendment Act, 1869," which is as follows:—

"If any person called to give Evidence in any Court of Justice, whether in a civil or criminal proceeding, shall object to take an oath, or shall be objected to as incompetent to take an oath, such person shall, if the presiding Judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following Promise and Declaration," &c.

The Form of the Declaration required follows in the Act, and the Commissioner will not fail to see, from the wording of it, that the giving of Evidence *orally* in Court is, *primarily* at least, contemplated by it.

EXHIBITS.

No. 25.

Form of Memorandum to be written upon Documents, &c., exhibited to a Deponent.

IN THE HIGH COURT OF JUSTICE.
—— Division,
or,
IN THE COURT OF APPEAL.
Between (*u*)
[*or*, In the Matter of, &c.] (*u*)

This is the paper-writing [*or*, *as the case may*

(*u*) Only the short title of the cause or matter need be set forth.

be] referred to in the Affidavit of ——, sworn in this cause [*or* matter, *as the case may be*], this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

Note.

The foregoing Form is applicable alike where the document or thing exhibited is referred to in the Affidavit as being "produced and shown" to the deponent, as where it is referred to as "hereunto annexed."

This is thus particularly mentioned for the reason, that some Commissioners, and others, seem to think that, where a document is referred to in an Affidavit as "annexed" to it, the *initials* only of the Commissioner placed on any such document are sufficient. Obviously such initials alone do not clearly and unmistakably identify the document as *the particular Document* referred to in the Affidavit sworn before the Commissioner.

Where a document is referred to as "produced and shown" to the deponent, the Commissioner (before he administers the oath to the deponent, or signs the Memorandum of Exhibit), should inquire of the deponent whether he has seen the Document—and, if the deponent be an illiterate person, the Commis-

sioner should also inquire whether he, the deponent, has informed himself of the contents of the Document.

Where a Document is referred to as "hereunto annexed," it should be annexed at the time the Affidavit is sworn to, and, in such case, the inquiry by the Commissioner before suggested is (except as to an illiterate person) unnecessary.

Sometimes the thing exhibited is of such a nature as that the requisite Memorandum of Exhibit cannot be written upon it. In such cases the Memorandum may be written upon a slip of paper, such slip of paper being *securely affixed* to the thing exhibited. And, for the purpose of identification, the Commissioner's name or initials should, if at all possible, be endorsed or otherwise written upon the Exhibit itself.

For further information respecting "Exhibits," see, *ante*, pp. 81 and 82.

RECOGNIZANCE.

No. 26.

FORM OF CERTIFICATE.

Taken and acknowledged by ——, at ——, in the county of ——, this —— day of ——.

Before me,
[*Name and Designation of the Commissioner*].

Form of words to be addressed by the Commissioner to the party:

You have informed yourself of the contents of this Recognizance, and of your liabilities under it, and are content.

WITNESS.

No. 27.

Form of Oath to be administered by an Examiner (x) to a Witness.

You swear that you shall true answer make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth—So help you God.

(x) This Form is added as being useful to any Commissioner who may at any time be appointed Special Examiner for taking the Examination of Witnesses in Proceedings in the Supreme Court.

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